

General Information Letter: Disability pay excluded from federal adjusted gross income and military retirement pay are not taxed by Illinois.

July 19, 2002

Dear:

This is in response to your letter dated July 8, 2002. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). **PLRs** are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A **PLR** is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the **PLR** are correct and complete. **GILs** do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 *Ill. Adm. Code Part 1200* regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

The nature of your question and the information provided require that we respond only with a **GIL**. In your letter you state in part as follows:

Title 10, United States Code authorizes three survivorship annuity plans under which retired military personnel (and uniformed personnel of the Public Health Service and National Oceanic and Atmospheric Administration) may provide for payments of annuities to their surviving spouses or dependent children by electing to receive a reduced rate of retired pay during their own lifetime. Subchapter I (10 U.S. Code 1431-1446) is the retired Serviceman's Family Protection Plan (RSFPP) (formerly the Uniformed Services Contingency Option Act of 1953); Subchapter II (10 U.S. Code 1447-1455) covers the Survivor Benefit Plan (SBP) (P.L. 92-425); and Subchapter III (10 U.S. Code 1456-1460) covers the Supplemental Survivor Benefit Plan (SSBP) (P.L. 101-189)

Our Association maintains a file of general information concerning the tax treatment of annuities such as RSFPP, SBP and SSBP for tax purposes by federal, state and local tax authorities. In addition, we post to our web site an annual tax article (2001) edition attached) which is available to our 396,000 members.

It would be appreciated if you would inform us whether or not RSFPP, SBP, and SSBP annuity payments are subject to any of the following state taxes, if such taxes are imposed by your state, any applicable exemptions (monetary or other) and excerpts from applicable state tax law/statutes: (a) Income Tax, and (b) Estate Tax.

Previous information received from your State is reflected in the attached article under the heading "State Income Tax Information on SBP/RSFPP/SSBP Annuities." One purpose of this correspondence is to validate or update your State's data as contained therein. Your prompt reply would be appreciated to facilitate an early December 2002 editorial deadline.

Under the Illinois Income Tax Act ("**IITA**"), an individual's Illinois net income is determined by starting with the amount of his or her federal adjusted gross income ("**AGI**"), then modifying that amount in accordance with specific addition and subtraction modifications. Thus, amounts not included in an individual's federal **AGI**, unless the subject of an Illinois statutory addition modification, are not subject to Illinois income tax. On the other hand, amounts included in a taxpayer's federal **AGI** are generally subject to Illinois income tax unless there is an applicable statutory subtraction modification.

Section 203(a)(2)(F) of the **IITA** provides a subtraction modification from federal **AGI** for all amounts included in a taxpayer's federal **AGI** as distributions under "any retirement or disability plan for employees of any governmental agency or unit." This subtraction modification includes annuity payments under the RSFPP (Retired Serviceman's Family Protection Plan) and the SBP (Survivor Benefit Plan). Our review of the SSBP (Supplemental Survivor Benefit Plan) leads us to conclude that SSBP payments would also be included within the scope of this subtraction modification. You should note that since these payments will not be subject to Illinois income taxation, they will also not be subject to Illinois income tax withholding.

The **IITA** contains no addition modification provision relating to amounts received as distributions from any retirement or disability plan for employees of any governmental agency or unit. As stated above, Section 203(a)(2)(F) in fact contains a subtraction modification for such payments. **IIT** regulations extend the term "employee" the same meaning as under Internal Revenue Code Section 3401(c) and Treasury Regulation 31.3401(c)-1 (86 Ill. Adm. Code 100.3100(b)). Section 3401(c) provides that the term "employee" includes an employee of the United States, or any agency or instrumentality thereof. Thus, the term "employee" for purposes of the **IITA** includes a member of the United States Armed Forces (and uniformed personnel of the Public Health Service and National Oceanic and Atmospheric Administration).

Military retired pay received pursuant to a retirement plan for members of the U.S. Armed Forces is therefore not subject to Illinois income tax, regardless of the reason for which the service member was retired. Likewise, any amount received as military disability retired pay pursuant to a disability plan for members of the U.S. Armed Forces is not subject to Illinois income tax.

As stated above, this is a **GIL** which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a **PLR** which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,
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